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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY A DEPUTY

8 **'08 CV 1540 JAH LSP**
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 DEBORAH BENCIVENGA,

12 Plaintiff,

13 v.

14 GROUP LONG TERM DISABILITY PLAN
15 FOR EMPLOYEES OF CYMER, INC.;

16 Defendants.
17

NO. _____

COMPLAINT
FOR RELIEF UNDER ERISA
(29 U.S.C. § 1001 et seq.)

18 COMES NOW the plaintiff who alleges against defendants as follows:

19 **NATURE OF ACTION**

20 1. This is an action arising under the Employee Retirement Income Security Act of
21 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001 et seq.

22 **JURISDICTION AND VENUE**

23 2. This court has subject matter jurisdiction pursuant to 29 U.S.C. § 1132(e)(1) and
24 28 U.S.C. § 1331.

25 3. Venue is proper in this district pursuant to 29 U.S.C. § 1132(e)(2).

26 4. At all times herein mentioned plaintiff DEBORAH BENCIVENGA was a resident
27 of San Diego and was an employee of CYMER, INC. until she was unable to return to work on
28 or about May 9, 2005. Plaintiff's position with CYMER, INC. was as a payroll supervisor.

1 5. CYMER, INC. is a Nevada Corporation duly authorized to transact business in the
2 State of California.

3 6. Defendant GROUP LONG TERM DISABILITY PLAN FOR EMPLOYEES OF
4 CYMER, INC. (hereinafter referred to as the "PLAN") is the designated name of the subject
5 Long Term Disability Plan and is an employee welfare benefit plan as defined by 29 U.S.C. §
6 1002(1).

7 7. HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY (hereinafter
8 referred to as "HARTFORD") is a Corporation duly authorized to transact business as an insurer
9 in the State of California.

10 8. During the course of her employment with CYMER, INC., plaintiff was given the
11 opportunity to participate in the PLAN as sponsored by CYMER, INC. which provided long term
12 disability benefits. The disability benefits were provided for through an insurance policy issued by
13 HARTFORD and obtained by CYMER, INC. for the benefit of its participating employees.
14 Plaintiff elected to participate in the plan and was covered under the policy when she became
15 disabled on or about May 9, 2005 and entitled to benefits on August 15, 2005 after a 90-day
16 waiting period. Plaintiff has remained continuously disabled to the present date due to neck and
17 back pain diagnosed as multilevel cervical disc disease at C4-5, C6-7 and L3-4, L4-5 spinal
18 stenosis.

19 9. The terms of the plan provided for monthly disability payments equal to 66-2/3%
20 of plaintiff's monthly pay to age 65 should plaintiff become and remain disabled. Plaintiff received
21 a Group Long Term Insurance Policy Number GLT-044402 issued to CYMER, INC. setting
22 forth the terms and conditions of the insured benefits. The policy is known to and in the
23 possession of defendants.

24 10. On information and belief, plaintiff alleges that defendant HARTFORD performed
25 all claims administration functions and made all decisions regarding plaintiff's eligibility for
26 benefits under the PLAN. Defendant HARTFORD was the claims administrator of the PLAN and
27 stood in a fiduciary relationship with the PLAN and plaintiff.

28 11. On information and belief plaintiff alleges that defendant CYMER, INC. was the

1 designated administrator of the PLAN and stood in a fiduciary relationship with the PLAN and
2 plaintiff.

3 12. At all times herein mentioned, the conduct of defendants, and each of them was
4 carried out through the acts and/or omissions of their agents, administrators, representatives,
5 and/or employees, and the conduct of said agents and/or employees was authorized and ratified by
6 defendants and/or the officers, directors and/or managing agents, and each of them.

7 13. On or about May 9, 2005 and while said policy of insurance was in full force and
8 effect, i.e., within the policy time periods, plaintiff sustained a loss covered under said policy of
9 insurance, in that she became totally disabled as defined in the terms and conditions of the policy
10 of insurance referred to herein.

11 14. At all times relevant, plaintiff made a timely claim for benefits, performed all of the
12 terms and conditions required of her under the PLAN and met all of the conditions requested for
13 her to receive PLAN benefits, beginning on August 15, 2005.

14 15. On or about August 15, 2005, plaintiff began receiving disability benefits. Plaintiff
15 continued to receive disability benefits until she was notified by a letter from HARTFORD dated
16 September 24, 2007 that her disability benefits ceased as of August 15, 2007. The PLAN is
17 required in any notice of an adverse benefit determination to communicate to the beneficiary "a
18 description of any additional material or information necessary for a claimant to perfect the claim
19 and an explanation of why such materials or information is necessary." (29 C.F.R. 2560.503-
20 1(g)(iii)). HARTFORD, in its termination letter of September 24, 2007, failed to do so.
21 HARTFORD merely advised plaintiff, "You may appeal our decision even if you do not have new
22 information to send us. Along with your appeal letter, you may submit written comments,
23 documents, records and other information related to your claim." Plaintiff, in response to
24 HARTFORD'S termination letter wrote to HARTFORD on November 14, 2007, indicating that
25 she did not understand why it had terminated her benefits. She indicated that her neck, lower
26 back and legs' pain levels had increased significantly since 2005 when HARTFORD originally
27 acknowledged her disability and stated, "I am very confused, why has your decision changed from
28 then until now?" She indicated she would like to appeal the decision, but submitted no

1 documentation with her letter. Plaintiff never received a response to her question presented in her
2 November 14, 2007 letter. She merely received a denial of appeal from HARTFORD dated
3 February 20, 2008. Therein, HARTFORD cited two forms of new information that it reviewed
4 since the prior termination letter. Those were plaintiff's letter of November 14, 2007 and a new
5 medical record review dated February 4, 2008 from Dr. Robert Pick. Dr. Pick's opinions were in
6 part based on a telephone conversation he had with Dr. Huntley, a treating physician of plaintiff.
7 However, Dr. Pick's report of his conversation with Dr. Huntley indicating that Dr. Huntley
8 believed plaintiff could return to sedentary work was a misstatement of Dr. Huntley's opinions.
9 Plaintiff, through counsel attempted to correct the error by providing HARTFORD with a report
10 from Dr. Huntley clarifying the conversation he had with Dr. Pick and providing clarification of
11 plaintiff's condition, along with updated medical reports and testing; however, HARTFORD
12 refused to consider the information provided.

13 16. Plaintiff has exhausted all administrative remedies provided for under the PLAN
14 to collect the benefits due her under the PLAN.

15 17. Plaintiff is entitled under the PLAN to the disability benefits from August 15,
16 2007, at the rate of \$3,449.33 per month to date, and in the future, as long as she remains
17 disabled and until she reaches the age of 65. Plaintiff is furthermore entitled to reasonable
18 attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g)(1).

19 18. Plaintiff was also entitled to life insurance with \$332,000.00 in benefits while she
20 was disabled with a waiver of premium until March 30, 2024. Those benefits were terminated
21 when her disability benefits were terminated. Plaintiff is seeking reinstatement of those life
22 insurance benefits.

23 WHEREFORE, plaintiff prays judgment as follows:

24 (1) For unpaid PLAN benefits and a declaration that plaintiff is entitled to ongoing
25 disability benefits;

26 (2) For reinstatement of the life insurance policy through the PLAN;

27 (3) For attorneys' fees according to proof;

28 (4) For costs of suit incurred herein; and,

1 (5) For such other and further relief as the Court may deem proper, including interest
2 (prejudgment and otherwise) on sums due.

3 STENNETT & STENNETT
4 Attorneys for Plaintiff

5
6 By



JOHN P. STENNETT

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DEBORAH BENCIVENGA

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John P. Stennett, Stennett & Stennett (619) 544-6887
501 W. Broadway #1340, San Diego, CA 92101

DEFENDANTS

GROUP LONG TERM DISABILITY PLAN FOR EMPLOYEES OF CYMER, INC.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV 1540 JAH LSP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C 1001 et seq.Brief description of cause:
Claim for disability benefits under an ERISA employee benefit plan

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/19/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 154299 AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

LAC

8/28/08

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154299 - TC
* * C O P Y * *
August 20, 2008
14:47:03

Civ Fil Non-Pris

USAO #: 08CV1540

Judge.: JOHN A HOUSTON

Amount.:

\$350.00 CK

Check#: BC4695

Total-> \$350.00

FROM: DEBORAH BENCIVENGA

VS

GROUP LONG TERM DISABILITY